

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re:)
)
Mauna Kea Broadcasting Company)
) CSR- _____
Must-Carry Complaint Regarding)
Television Station KLEI(DT),)
Kailua-Kona, Hawaii)

To: Office of the Secretary
Attn: Chief, Media Bureau

MUST-CARRY COMPLAINT

Mauna Kea Broadcasting Company ("Mauna Kea"), pursuant to Section 614 of the Communications Act of 1934, as amended, and Sections 76.7 and 76.61 of the Commission's Rules, hereby files this Complaint requesting that the Commission order Time Warner Entertainment Company, L.P., d/b/a Oceanic Time Warner Cable ("Oceanic") to carry local commercial television station KLEI(DT), licensed to serve Kailua-Kona, Hawaii (the "Station") in accordance with the Commission's must carry rules and policies within the Honolulu, Hawaii designated market area (the "DMA") for the remaining duration of the current must carry election cycle, expiring December 31, 2014.

I. OCEANIC HAS IGNORED MAUNA KEA'S NOTIFICATION OF VIOLATION OF ITS CARRIAGE RIGHTS

In a letter dated May 1 (the "Carriage Request"), Mauna Kea notified Oceanic that its failure to carry the Station throughout the Honolulu DMA constituted a failure by Oceanic to comply with the Commission's must-carry rules. A copy of the Carriage Request is attached to this Petition at its Exhibit 1. The Carriage Request demanded that Oceanic commence carriage of the Station on all of Oceanic's cable systems serving the DMA (the "Cable Systems"), and included the agreement of

the Station to be responsible for the costs of delivering a good quality signal to the Cable System(s) via alternative means in the event that the Station did not deliver a good quality over-the-air signal to the headend.

The Carriage Request was mailed on May 8 and was received by Oceanic on May 9, as demonstrated by the certified mail return receipt attached to this Petition as its Exhibit 2.¹ Under Section 76.61(a)(2) of the Commission's Rules, a cable operator is required to respond within thirty days to a station's carriage request, and must either commence carriage or provide a written response setting forth the cable operator's reason(s) for believing that it is not obligated to carry the Station's signal. Oceanic has not provided Mauna Kea with any response to the Carriage Request.

Section 76.61(a)(5) provides that any must-carry complaint must be filed within sixty days of either a cable operator's denial of a carriage request or the expiration of the thirty-day response period set forth in Section 76.61(a)(2). Oceanic's thirty-day response period expired on Friday, June 8 with no response, and this Complaint is therefore timely filed under Section 76.61(a)(5).

II. THE STATION IS ENTITLED TO MANDATORY CARRIAGE ON OCEANIC'S CABLE SYSTEMS IN THE HONOLULU, HAWAII DMA

Under the Communications Act and the Commission's Rules, a station is entitled to mandatory carriage on cable systems if it is a "local commercial television station," as defined in Section 76.55(c) of the Commission's Rules. Section 76.55(c) defines a "local commercial television station" as any full power television broadcast station that is 1) licensed to a community within the same television market as the cable system, 2) not considered a distant signal pursuant to the cable compulsory copyright license, and 3) capable of delivering a good quality over-the-air signal or willing to agree to be responsible for the costs of delivering such a signal through

¹ In an abundance of caution, Mauna Kea separately sent duplicate copies of the Carriage Request to Oceanic; Exhibit 2 includes receipts showing that Oceanic received both copies.

alternative means. KLEI(DT) qualifies as a local commercial television station on the Cable Systems operated by Oceanic and therefore is entitled to mandatory carriage.

Pursuant to Section 76.55(e) a station's television market is defined as its designated market area ("DMA") as assigned by Nielsen Media Research. The Station is licensed to serve the community of Kailua-Kona, Hawaii and is in the Honolulu, Hawaii, DMA.² Oceanic's Cable System(s) also serve communities located within the Honolulu, Hawaii DMA, and are therefore within the same local market as KLEI(DT). For the same reasons, KLEI(DT) would not be considered a "distant signal" for copyright purposes. As noted above, Mauna Kea has confirmed to Oceanic, and reaffirms here, that is willing to be responsible for delivery of the Station's signal to Oceanic's headend through alternative means in the event Oceanic is unable to receive a good quality over-the-air signal. Mauna Kea sent a letter to Oceanic dated September 30, 2011 properly electing mandatory carriage for the current election cycle expiring on December 31, 2014. This Petition was preceded by a written request for carriage delivered to the Cable Operator and the Cable Operator has not identified any defense to the request for carriage.

² See Television and Cable Factbook 2012 at A-393.
(00405943-2)

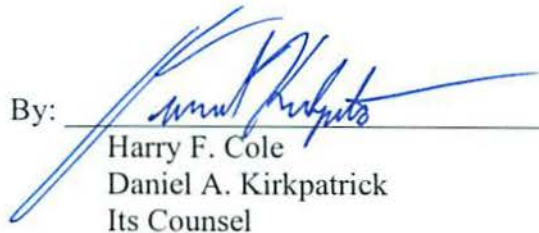
III. CONCLUSION

Mauna Kea is clearly entitled to mandatory carriage of the signal of KLEI(DT) on cable systems operated by Oceanic in the Honolulu DMA. Mauna Kea has properly elected mandatory carriage, has notified Oceanic of its failure to comply with the Commission's mandatory carriage rules with respect to KLEI(DT), and has requested that Oceanic commence carriage of the Station on all of its Cable Systems in the Honolulu DMA. Oceanic has not provided any response to Mauna Kea, and the time for such response has expired, forcing Mauna Kea to file this Complaint. For the reasons set forth herein, Mauna Kea hereby respectfully requests that the Commission order Oceanic to carry the Station in accordance with the must carry rules and policies.

Respectfully submitted,

MAUNA KEA BROADCASTING COMPANY

By: _____


Harry F. Cole
Daniel A. Kirkpatrick
Its Counsel

FLETCHER, HEALD & HILDRETH, PLC
1300 North 17th Street, Suite 1100
Arlington, VA 22209
(703) 812-0400

June 13, 2012

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re:)
)
Mauna Kea Broadcasting Company)
) CSR-_____
Must-Carry Complaint Regarding)
Television Station KLEI(DT),)
Kailua Kona, Hawaii)

To: Office of the Secretary
Attn: Chief, Media Bureau

DECLARATION OF DR. CHRISTOPHER RACINE

1. My name is Dr. Christopher Racine. I am President of Mauna Kea Broadcasting Company, Inc. and involved in the day-to-day operations of KLEI(DT).
2. I have reviewed the foregoing Must-Carry Complaint and all factual matters set forth therein are true to the best of my knowledge and belief. To the best of my knowledge, information, and belief formed after reasonable inquiry, the foregoing Must-Carry Complaint is well grounded in fact; warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and is not interposed for any improper purpose.
3. On September 30, 2011, I sent a letter to Time Warner Entertainment Company, L.P., d/b/a Oceanic Time Warner Cable ("Oceanic") electing mandatory carriage of the signal of KLEI(DT) on all cable systems operated by Oceanic in the Honolulu DMA during the election cycle expiring December 31, 2014.
4. On May 8, I mailed a letter to Oceanic notifying Oceanic of its failure to retransmit the signal of KLEI(DT) on all of its cable systems in the Honolulu DMA and requesting that Oceanic commence such carriage. That letter included a statement that Mauna Kea Broadcasting Company, Inc. would deliver a good quality over-the-air signal to Oceanic's headend or that Mauna Kea would be responsible for the costs of delivering such a signal through alternative means. Postal records show that letter was received by Oceanic on May 9.
5. I have not received any response from Oceanic to the letter demanding carriage of KLEI(DT)



Dr. Christopher Racine
President

Mauna Kea Broadcasting Company, Inc.

EXHIBIT 1

MAUNA KEA BROADCASTING COMPANY, INC.

POST OFFICE 143, HONOLULU, HI 96810

T: 808.591.1683 F: 808.356-0469

chris@hawaii.org

May 1, 2012

Via Certified Mail, Return Receipt Requested

Time Warner Entertainment Company, L.P.
dba Oceanic Time Warner Cable
200 Akamainui Street
Mililani, Hawaii 96789
Attn: Bob Barlow, President

Re: Carriage of KLEI (DT), Kailua Kona, Hawaii

Dear Mr. Barlow:

Mauna Kea Broadcasting Company ("Mauna Kea") is the licensee of television station KLEI (DT). KLEI (DT) is licensed to Kailua Kona, Hawaii, which is located within the Honolulu, Hawaii, Designated Market Area (the "Honolulu DMA"). Time Warner Entertainment Company, L.P., dba Oceanic Time Warner Cable ("Oceanic") operates one or more cable television systems serving communities located within the Honolulu DMA (the "Cable System"). As more fully described herein, Mauna Kea is hereby demanding carriage of KLEI (DT) on the Cable System in accordance with Section 76.61 of the rules of the Federal Communications Commission (the "FCC").

Pursuant to Section 76.64 of the rules of the FCC, Mauna Kea sent an election notice to Oceanic via certified mail on September 30, 2011 electing mandatory carriage on the Cable System for the election cycle beginning on January 1, 2012. Because KLEI (DT) elected must carry status on the Cable System and because KLEI (DT) is a local commercial broadcast television station with respect to the Cable System, KLEI (DT) is entitled to mandatory carriage on the Cable System.

Carriage of KLEI (DT) will not cause the Cable Systems to exceed the maximum number of signals a cable system is required to carry under the FCC's must carry rules. KLEI (DT) does not and will not share a broadcast network affiliation with, or substantially duplicate the programming of, any other local commercial broadcast television station in the Honolulu DMA. If Oceanic is unable to receive a "good-quality" over the air signal from KLEI (DT), Mauna Kea agrees, at its own cost, to ensure delivery of a good quality signal of KLEI (DT) through alternative means. There therefore is no lawful reason for Oceanic to refuse to carry KLEI (DT) on any part of the Cable System.

Mauna Kea, however, is aware that Oceanic currently fails to carry the signal of KLEI (DT) in some of the communities served by the Cable System, in clear violation of the FCC's mandatory carriage rules. Thus, pursuant to Section 76.61(a)(1) of the rules of the FCC, Mauna Kea hereby notifies you that we believe that Oceanic has failed to meet its carriage obligations and we demand mandatory carriage of KLEI(DT) in all communities served by the Cable System in the Honolulu DMA.

Based on the above facts, there is no lawful reason for Oceanic to deny this request for mandatory carriage. Indeed, although this notice letter is necessary to preserve Mauna Kea's rights under the FCC's rules, we hope that Oceanic's carriage of KLEI (DT) on the Cable System will commence without resort to the FCC's complaint procedures.

Thank you for your attention to this matter.

Sincerely,

Dr. Christopher J. Racine
General Manager

EXHIBIT 2

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, if possible.

T. W. ENTERTAINMENT CO., L.P.
OCEANIC TIME WARNER CABLE
ATTN: BOB BARLOW, PRESIDENT
300 AKAMAINUI STREET
HONOLULU, HI 96789

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
X *Tasha J. Aguiar*

B. Received by (Printed Name) *Tasha J. Aguiar* C. Date of Delivery *8-9-12*

D. Is delivery address different from Form 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Article Number **7011 0110 0002 2061 6884**
(Transfer from service label)

Form 3811, February 2004

Domestic Return Receipt

102596-02-11-1540

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

DR. CHRISTOPHER RACINE
KLEI-TV6, KAILUA-KONA, HI
MAUNA KEA BROADCASTING
POST OFFICE BOX 143
HONOLULU, HI 96810



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

T. W. ENTERTAINMENT CO., L.P.
OCEANIC TIME WARNER CABLE
ATTN: BOB BARLOW, PRESDENT
200 AKAMAINUI STREET
MILILANI, HI 96789

2. Article Number

(Transfer from service list)

7011 0110 0002 2061 6921

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x

Tasha J. Aguiar

☐ Agent☐ Addressee

B. Received by (Print Name)

Tasha J. Aguiar

C. Date of Delivery

2/9/12

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

DR. CHRISTOPHER RACINE
KLEI-TV6, KAILUA-KONA, HI
MAUNA KEA BROADCASTING
POST OFFICE BOX 143
HONOLULU, HI 96810



CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, hereby certify that on this 13th day of June, 2012, I caused a copy of the foregoing "Petition for Special Relief" to be served via U.S. mail, postage prepaid, upon the following:

Bob Barlow, President
Time Warner Entertainment Co., L.P.
200 Akamainui Street
Mililani, HI 96789


Michelle Brown Johnson